

REMARKS

Claims 1, 3-5, 7, 10, and 12-14 are now pending in the above-captioned application.

INFORMATION DISCLOSURE STATEMENT

An Information Disclosure Statement is filed herewith citing a newly discovered reference (Long, U.S. Patent No. 5,048,734), which has come to applicant's attention since the initial filing of the present application.

DRAWING OBJECTION

The drawings were objected to due on the grounds that the partially integrated strap of claims 5 and 14 were not shown in the drawings. The attached Drawing Amendment and Substitute Specification corrects this error. In particular, new claim 21 has been added, and a corresponding description in the Specification, to illustrate the embodiment of claims 5 and 14. As such, applicant submits that the objection is now moot. **No other changes have been made to the Figures. However, a new drawing set is submitted herewith to renumber the sheets accordingly, as a new sheet (sheet 11) has been added.**

DOUBLE PATENTING REJECTION

Claims 20 and 22 were rejected under a Double Patenting rejection, due to a typographical error causing a duplication of dependency. Claims 20 and 22 have been cancelled in the present amendment, and thus the Double Patenting rejection is now moot.

REJECTION UNDER 35 U.S.C. §103

Claims 1, 3, 4, 6, 8, 10, 12, 13, 15, 17, 19, and 21 were rejected under 35 U.S.C. §103 as being unpatentable over Henderson in view of Mahoney, Jr. Applicant respectfully traverses this rejection.

In order to be complete, an obviousness-type rejection must contain two elements:

1. The references, as combined, must show all the features of the claimed invention (all elements rule); and
2. A *proper* motivation to combine the references must be provided.

In this instance, neither element is present.

Henderson discloses a fold-up beverage container similar to that shown in applicant's own PRIOR ART Figures. Henderson's point of novelty appears to be the use of a vinyl covering for the material used in the beverage holder. Henderson does not teach or suggest a handle for his container holder. Insulated beverage holders are known in the art, as is disclosed in the BACKGROUND of the present invention. These beverage holders are usually given away at promotional events or sold with team names or other logos on them. The use of logos and the like is well known in the art to promote products and services as well as to spread awareness of products and services, including sporting teams, promotional events and the like.

One problem with such Prior Art devices, including the apparatus of Henderson, is that the logo or advertisement on the device is obscured by the hand when the user is actually holding the insulated beverage drink holder. A logo which is obscured serves little or no purpose. If the user or other parties only sees the logo when the item is not in use, the purpose of the apparatus is diminished. In the present invention, a wide handle is provided (See, element 110 in Figure 1) which is suitable for providing an advertising logo or the like. When the product is held by the consumer (See Figure 1) the outside of the handle or strap is clearly visible to others.

Thus, in a stadium filled with fans using the product, the image one sees is the repetition of the logo, not just hands grasping beverages. Henderson does not teach or suggest such a handle, and the remaining references do not teach a handle, which is suitable for applying a logo.

The independent claims have been amended to recite this logo on the strap, a feature supported by the Specification in paragraphs [0009], [0018], and [0042].

Mahoney discloses a fabric “sack” that may be used for containers of various sizes, adjusted by means of two drawstrings. The sack of Mahoney is fundamentally different than the container holder of Henderson in that it is a relatively non-elastic fabric sack that relies on drawstrings to maintain a grip on a container. In Henderson, as in the present invention, elastic foam is used for the body of the apparatus (Note that Henderson discloses and claims an additional vinyl layer on his apparatus which is not explicitly taught by the present invention).

The fabric sack of Mahoney, Jr. is more akin to a small shoulder bag or backpack (See, e.g., Figure 2) than to a stand-alone beverage holder that grips a beverage container. Thus, the motivation to combine any of the structure of Mahoney, which is a loose fabric design, with the elastic foam embodiment of Henderson is lacking.

With regard to claims 4 and 13, the Office Action argues that, in hindsight, it would be obvious to attach the strap to one of the panels on the side of the holder in order to facilitate folding of the holder. Since Mahoney does not teach or suggest such a folding holder, and Henderson does not teach or suggest a handle, it is unclear where this motivation comes from, other than hindsight.

With regard to claims 6 and 15, the width of the strap is more than a matter of design choice as alleged in the Office Action. In the present invention, the strap is explicitly made a certain width in order that an advertising logo or the like be applied to it. The strap of Mahoney (Figure 1) is clearly lacking in that regard, as it appears his strap is about 1” wide. The limitation of the width of the strap has been placed into independent claims 1 and 10, along with the limitation of the logo being applied to the strap. Neither limitation is taught or suggested by any of the Prior Art references. Thus, applicant submits that the claims are even further distinguishable from the art of record.

With regard to claims 8 and 17, the limitation of the flexible material being one of expanded polyurethane or neoprene has been inserted into the independent claims. Mahoney does not teach or suggest making a handle, or any part of his apparatus, for that matter, from this material.

Claims 2, 9, 11, 18, 20 and 22 were rejected under 35 U.S.C. §103 as being unpatentable over Henderson in view of Mahoney, Jr in view of Wicker. Applicant respectfully traverses this rejection.

Wicker discloses a non-foldable type can cooler made from what appears to be tubular foamed polyurethane or polyurethane molded into the particular shape. The thickness and shape of the product preclude the use of stitching or otherwise forming a handle thereon. Thus, the motivation to combine a relatively solid and inflexible carrier with the foldable insulated can holder of Henderson is lacking. A handle added to Wicker would not produce the same product as the present invention.

Note the hinge of Wicker, formed as a plastic piece, which pierces the foam sides of his holder. Wicker uses such a hinge, as it is difficult to stitch or otherwise attach items to such tubular (e.g., pipe insulation) type foam. If Wicker were motivated to add a handle, it is clear that such a handle would be similar to the plastic hinge of his teaching. Adding a handle made of foam would be difficult to do, and clearly is not contemplated by Wicker.

Note also that Wicker does not address the limitation of the width of the strap, which has been placed into independent claims 1 and 10, along with the limitation of the logo being applied to the strap. Neither limitation is taught or suggested by any of the Prior Art references. Thus, applicant submits that the claims are even further distinguishable from the art of record.

Claims 5, 7, 14, and 16 were rejected under 35 U.S.C. §103 as being unpatentable over Henderson in view of Mahoney, Jr in view of Evans. Applicant respectfully traverses this rejection.

Evans is similar in scope to the Long reference cited herewith. Evans uses a flexible fabric beverage holder (Tricot, Col. 4, line 32, Tricot, according to the dictionary, is a type of knit material). As previously noted, the present invention is not directed to such a fabric holder, but rather one made of

foam. This limitation has been placed into the independent claims, and thus claims 5, 7, 14, and 16 are distinguishable over Henderson and Mahoney in view of Evans.

Note also that Henderson does not address the limitation of the width of the strap, which has been placed into independent claims 1 and 10, along with the limitation of the logo being applied to the strap. Neither limitation is taught or suggested by any of the Prior Art references. Thus, applicant submits that the claims are even further distinguishable from the art of record.

Claims 8 and 17 were rejected under 35 U.S.C. §103 as being unpatentable over Henderson in view of Mahoney, Jr in view of Foster et al. Applicant respectfully traverses this rejection.

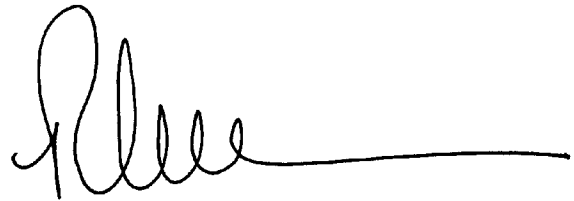
Foster teaches a beverage holder with a pocket for accepting a hand. A pocket is not the same as a strap, and thus the Foster reference fails to teach or suggest the present invention. Note also that the limitation of the handle material being made of the same material as the holder has been added to the independent claims. The problem with the pocket design of Foster is that heat from the hand is trapped within the beverage holder, which would tend to warm the beverage. In the present invention a strap is provided externally to the holder. The strap is wide enough to display an advertising logo and also securely grip the hand, but the strap does not trap heat and warm the beverage as in Foster.

CONCLUSION

None of the references cited, taken alone or in combination, teach or suggest a foldable foam beverage holder with a handle formed from the same material as the holder. Thus, all of claims 1, 3-5, 7, 10, and 12-14 are now in condition for allowance.

An early Notice of Allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Bell', followed by a long horizontal line extending to the right.

Robert P. Bell
Registration Number 34,546

Robert Platt Bell
Registered Patent Attorney
P.O. Box 13165
Jekyll Island, Georgia 31527

(703) 474-0757